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OSHA: Employee Workplace Rights

U.S. Department of Labor
Occupational Safety and Health Administration

1989 (Revised)

OSHA 3021

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OSHA: Employee Workplace Rights

U.S. Department of Labor
Elizabeth Dole, Secretary

Occupational Safety and Health Administration
1989 (Revised)

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I. Introduction

The Occupational Safety and Health Act of 1970 (hereinafter called the Act) created the Occupational Safety and Health Administration (OSHA) within the Department of Labor and encouraged employers and employees to reduce workplace hazards and to implement safety and health programs.

In so doing, employees were given many new rights and responsibilities, including the right to do the following:

- Review copies of appropriate standards, rules, regulations, and requirements that the employer should have available at the workplace.
- Request information from the employer on safety and health hazards in the workplace, precautions that may be taken, and procedures to be followed if an employee is involved in an accident or is exposed to toxic substances.
- Have access to relevant employee exposure and medical records.
- Request the OSHA area director to conduct an inspection if they believe hazardous conditions or violations of standards exist in the workplace.
- Have an authorized employee representative accompany the OSHA compliance officer during the inspection tour.
- Respond to questions from the OSHA compliance officer, particularly if there is no authorized employee representative accompanying the compliance officer on the inspection "walkaround."
- Observe any monitoring or measuring of hazardous materials and see the resulting records, as specified under the Act, and as required by OSHA standards.

- Have an authorized representative, or themselves, review the Log and Summary of Occupational Injuries (OSHA No. 200) at a reasonable time and in a reasonable manner.

- Object to the abatement period set by OSHA for correcting any violation in the citation issued to the employer by writing to the OSHA area director within 15 working days from the date the employer receives the citation.

- Submit a written request to the National Institute for Occupational Safety and Health (NIOSH) for information on whether any substance in the workplace has potentially toxic effects in the concentration being used, and have names withheld from employer, if that is requested.

- Be notified by the employer if the employer applies for a variance from an OSHA standard, and testify at a variance hearing, and appeal the final decision.

- Have names withheld from employer, upon request to OSHA, if a written and signed complaint is filed.

- Be advised of OSHA actions regarding a complaint and request an informal review of any decision not to inspect or to issue a citation.

- File a Section 11(c) discrimination complaint if punished for exercising the above rights or for refusing to work when faced with an imminent danger of death or serious injury and there is insufficient time for OSHA to inspect; or file a Section 405 reprisal complaint (under the Surface Transportation Assistance Act (STAA)).

Pursuant to Section 18 of the Act, States can develop and operate their own occupational safety and health programs under State plans approved and monitored by Federal OSHA. States that assume responsibility for their own occupational safety and health program must have provisions at least as

effective as those of Federal OSHA, including the protection of employee rights. There are currently 25 State plan States. Twenty-one States and two territories administer plans covering both private and State and local government employment; and two States cover only the public sector. All the rights and responsibilities described in this booklet are similarly provided by State programs. (See list of these States at the end of this publication.)

Any interested person or groups of persons, including employees, who have a complaint concerning the operation or administration of a State plan may submit a Complaint About State Program Administration (CASPA) to the appropriate OSHA regional administrator (see list at the end of this publication of OSHA Regions and covered States). Under CASPA procedures, the OSHA regional administrator investigates these complaints and informs the State and the complainant of these findings. Corrective action is recommended when required.

II. Explanation

OSHA Standards

Before OSHA issues, amends or deletes regulations, the agency publishes them in the *Federal Register* so that interested persons or groups may comment.

The employer has a legal obligation to inform employees of OSHA safety and health standards which apply to their workplace. Upon request, the employer must make available copies of those standards and the OSHA law itself. If more information is needed about workplace hazards than the employer can supply, it can be obtained from the nearest OSHA area office.

Under the Act, employers have a general duty to provide work and a workplace free from recognized hazards. Citations may be issued by OSHA when violations of standards are found, and for violations of the general duty clause, even if no OSHA standard applies to the particular hazard.

The employer also must display in a prominent place the official OSHA poster which describes rights and responsibilities under OSHA's law.

Right to Know

Employers must establish a written, comprehensive hazard communication program that includes provisions for container labeling, material safety data sheets, and an employee training program. The program must include a list of the hazardous chemicals in each work area, the means the employer uses to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), hazards associated with chemicals in unlabeled pipes, and the way the employer will inform other employers of the hazards to which their employees may be exposed.

Access to Exposure and Medical Records

Employers must inform employees of the existence, location, and availability of their medical and exposure records when employees first begin employment and at least annually thereafter. Employers also must provide these records to employees or their designated representatives, upon request. Whenever an employer plans to stop doing business and there is no successor employer to receive and maintain these records, the employer must notify employees of their right of access to records at least 3 months before the employer ceases to do business.

When OSHA standards require the employer to measure exposure to harmful substances, the employee (or representative) has the right to observe the testing and to examine the records of the results. If the exposure levels are above the limit set by the standard, the employer must tell employees what will be done to reduce the exposure.

OSHA Inspections

OSHA encourages employers and employees to work together to reduce hazards. Employees should discuss safety and health problems with the employer, other workers, and union representatives (if there is a union). If a hazard cannot be corrected, an employee should contact the nearest OSHA area office. If necessary, the OSHA area director can order an inspection if the employee submits a formal complaint.

Employee Representative

Under Section 8(e) of the Act, a workers' representative has a right to accompany an OSHA compliance officer (also referred to as a compliance safety and health officer, CSHO, or inspector) during an inspection. The representative must be chosen by the union (if there is one) or by the employees. Under no circumstances may the employer choose the workers' representative.

If employees are represented by more than one union, each union may choose a representative. Normally, the representative of each union will not accompany the inspector for the entire inspection, but will join the inspection only when it reaches the area where those union members work.

An OSHA inspector may conduct a comprehensive inspection of the entire workplace or a partial inspection limited to certain areas or aspects of the operation.

Helping the Compliance Officer

Workers have a right to talk privately to the compliance officer on a confidential basis whether or not a workers' representative has been chosen.

Workers are encouraged to point out hazards, describe accidents or illnesses that resulted from those hazards, describe past worker complaints about hazards, and inform the inspector if working conditions are not normal during the inspection.

Observing Monitoring

If health hazards are present in the workplace, a special OSHA health inspection may be conducted by an "industrial hygienist." This OSHA inspector may take samples to measure levels of dust, noise, fumes, or other hazardous materials.

The measurement results will be provided by OSHA to the employee representative. The inspector also will gather detailed information about the employer's efforts to control health hazards, including results of tests the employer may have conducted.

Reviewing OSHA Form 200

If the employer has more than 10 employees, the employer must maintain records of all work-related injuries and

illnesses, and the employees (or their representative) have the right to review those records. Some industries with very low injury rates (e.g., insurance and real estate offices) are exempt from recordkeeping.

Work-related injuries must be recorded if they result in death, lost workdays, restriction of work or movement, loss of consciousness, transfer to another job, or medical treatment (other than first-aid). All diagnosed work-related illnesses also must be recorded.

After an Inspection

At the end of the inspection, the OSHA inspector will meet with the employer and the employee representatives in a "closing conference" to discuss the abatement of hazards which have been found.

If it is not practical to hold a joint conference, separate conferences will be held, and OSHA will provide written summaries, on request.

During the closing conference, the employee representative can describe, if not reported already, what hazards exist, what should be done to correct them, and how long it should take. Other facts about the history of health and safety conditions at the workplace can also be provided.

Challenging Abatement Period

Whether or not the employer accepts OSHA's actions, the employee (or representative) has the right to contest the time OSHA allows for correcting a hazard.

This contest must be filed in writing with the OSHA area director within 15 working days after the citation is posted. The contest will be decided by the Occupational Safety and Health Review Commission. The Review Commission is an independent agency and is not part of the Department of Labor.

Contacting NIOSH

The National Institute for Occupational Safety and Health (NIOSH) can provide free information on the potential dangers of substances in the workplace. In some cases, NIOSH may visit a jobsite to evaluate possible health hazards. The address is as follows:

National Institute for
Occupational Safety and Health
Centers for Disease Control
Atlanta, Georgia 30333

NIOSH will keep confidential the name of the person who asked for help if requested to do so.

Variances

Some employers may not be able to comply fully with a new safety and health standard in the time provided due to shortages of personnel, materials or equipment. In situations like these, employers may apply to OSHA for a temporary variance from the standard. In other cases, employers may be using methods or equipment that differ from those prescribed by OSHA, but which the employer believes are equal to or better than OSHA's requirements, and would qualify for consideration as a permanent variance. Applications for a permanent variance must basically contain the same information as those for temporary variances.

The employer must certify that workers have been informed of the variance application, that a copy has been given to the employee's representative, and that a summary of the application has been posted wherever notices are normally posted in the workplace. Employees also must be informed that they have the right to request a hearing on the application.

Employees, employers, and other interested groups are

encouraged to participate in the variance process. Notices of variance application are published in the *Federal Register* inviting all interested parties to comment on the action.

Confidentiality

OSHA will not tell the employer who requested the inspection unless the complainant indicates that he or she has no objection.

Review if No Inspection is Made

The OSHA area director evaluates the complaint from the employee or representative and decides whether it is valid. If the area director decides not to inspect the workplace, he or she will send a certified letter to the complainant explaining the decision and the reasons for it. Complainants must be informed that they have the right to request further clarification of the decision from the area director; if still dissatisfied, they can appeal to the OSHA regional administrator for an informal review. Similarly, a decision by an area director not to issue a citation after an inspection is subject to further clarification from the area director and to an informal review by the regional administrator.

Discrimination for using rights

Although there is nothing in the OSHA law that gives an employee the right to refuse to perform an unsafe or unhealthful job assignment, OSHA's regulations, which have been upheld by the U.S. Supreme Court, provide that an employee may refuse to work when faced with an imminent danger of death or serious injury.

The conditions necessary to justify a work refusal are very stringent, however, and a work refusal should be an action taken only as a last resort. If time permits, the unhealthful or unsafe condition should be reported to OSHA or other appropriate regulatory agency.

Thus, employees have a right to seek safety and health on

the job without fear of punishment. That right is spelled out in Section 11(c) of the Act.

The law says the employer cannot punish or discriminate against employees for exercising such rights as complaining to the employer, union, OSHA, or any other government agency about job safety and health hazards; or for participating in OSHA inspections, conferences, hearings, or other OSHA-related activities.

A State that is administering its own occupational safety and health enforcement program pursuant to Section 18 of the Act must have provisions as effective as those of Section 11(c) to protect employees from discharge or discrimination. OSHA, however, retains its Section 11(c) authority in all States regardless of the existence of an OSHA-approved State occupational safety and health program.

Workers believing they have been punished for exercising safety and health rights must contact the nearest OSHA office within 30 days of the time they learn of the alleged discrimination. A representative of the employee's choosing can file the 11(c) complaint for the worker. Following a complaint, OSHA will contact the complainant and conduct an in-depth interview to determine whether an investigation is necessary.

If evidence supports the conclusion that the employee has been illegally punished for exercising safety and health rights, OSHA will ask the employer to restore that worker's job earnings and benefits. If the employer declines to enter into a voluntary settlement, OSHA may take the employer to court. In such cases, the worker will not have to pay any legal fees.

Section 405 of the Surface Transportation Assistance Act (STAA) was enacted on January 6, 1983, and provides protection from reprisal by employers for truckers and certain other employees in the trucking industry involved in activity related to interstate commercial motor vehicle safety and health. Secretary of Labor's Order No. 9-83 (48 FR 35736, August 5, 1983) delegated to the Assistant Secretary of

OSHA the authority to investigate and to issue findings and preliminary orders under Section 405.

Employees who believe they have been discriminated against for exercising their rights under Section 405 can file a complaint with OSHA within 180 days of the incident. The Secretary will then investigate the complaint, and within 60 days after it was filed, issue findings as to whether there is a reason to believe Section 405 has been violated.

If the Secretary finds that a complaint has merit, he/she also will issue an order requiring, where appropriate, abatement of the violation, reinstatement with back pay and related compensation, payment of compensatory damages, and the payment of the employee's expenses in bringing the complaint. Either the employee or employer may object to the findings. If no objection is filed with in 30 days, the finding and order are final. If a timely filed objection is made, however, the objecting party is entitled to a hearing on the objection before an Administrative Law Judge of the Department of Labor.

Within 120 days of the hearing, the Secretary will issue a final order. A party aggrieved by the final order may seek judicial review in a court of appeals within 60 days of the final order.

The following activities of truckers and certain employees involved in interstate commercial motor vehicle operation are protected under Section 405:

- Filing of safety or health complaints with OSHA or other regulatory agency relating to a violation of a commercial motor vehicle safety rule, regulation, standard, or order.
- Instituting or causing to be instituted any proceedings relating to a violation of a commercial motor vehicle safety rule, regulation, standard or order.
- Testifying in any such proceedings relating to the above items.

- Refusing to operate a vehicle when such operation constitutes a violation of any Federal rules, regulations, standards or orders applicable to commercial motor vehicle safety or health; or because of the employee's reasonable apprehension of serious injury to himself or the public due to the unsafe condition of the equipment.

- Complaining directly to management about job safety or health conditions relating to commercial motor vehicle operation.

Complaints under Section 405 are filed in the same manner as complaints under 11(c). The filing period for Section 405 is 180 days from the alleged discrimination, rather than 30 days as under Section 11(c).

Employee Responsibilities

Although OSHA does not cite employees for violations of their responsibilities, each employee "shall comply with all occupational safety and health standards and all rules, regulations, and orders issued under the Act" that are applicable. Employee responsibilities and rights in States with their own occupational safety and health programs are generally the same as for workers in Federal OSHA States. An employee should do the following:

- Read the OSHA poster at the jobsite.

- Comply with all applicable OSHA standards.

- Follow all employer safety and health rules and regulations, and wear or use prescribed protective equipment while working.

- Report hazardous conditions to the supervisor.

- Report any job-related injury or illness to the employer, and seek treatment promptly.

- Cooperate with the OSHA compliance officer conducting an inspection if he or she inquires about safety and health conditions in the workplace.
- Exercise rights under the Act in a responsible manner.

States with Approved Plans

Office of State Programs

Commissioner
Alaska Department of Labor
P.O. Box 1149
Juneau, Alaska 99802-1149
(907) 465-2700

Director
Industrial Commission of Arizona
800 W. Washington
Phoenix, Arizona 85007
(602) 255-5795

Director
California Department of Industrial Relations
525 Golden Gate Avenue
San Francisco, California 94102
(415) 557-3356

Commissioner
Connecticut Department of Labor
200 Folly Brook Boulevard
Wethersfield, Connecticut 06109
(203) 566-5123

Director
Hawaii Department of Labor and Industrial Relations
825 Mililani Street
Honolulu, Hawaii 96813
(808) 548-3150

Commissioner
Indiana Department of Labor
1013 State Office Building
100 North Senate Avenue
Indianapolis, Indiana 46204-2287
(317) 232-2665

Commissioner
Division of Labor Services
100 E. Grand Avenue
Des Moines, Iowa 50319
(515) 281-3447

Secretary
Kentucky Labor Cabinet
U.S. Highway 127 South
Frankfort, Kentucky 40601
(502) 564-3070

Commissioner
Maryland Division of Labor and Industry
Department of Licensing and Regulation
501 St. Paul Place
Baltimore, Maryland 21202-2272
(301) 659-4176

Director
Michigan Department of Labor
309 N. Washington
Box 30015
Lansing, Michigan 48909
(517) 373-9600

Director
Michigan Department of Public Health
3500 North Logan Street
Box 30195
Lansing, Michigan 48909
(517) 335-8022

Commissioner
Minnesota Department of Labor and Industry
443 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-2342

Administrator
Nevada Department of Industrial Relations
Division of Occupational Safety and Health
Capitol Complex
1370 S. Curry Street
Carson City, Nevada 89710
(702) 885-5240

Director
New Mexico Environmental Improvement Division
Health and Environment Department
1190 St. Francis Drive, Room N-2200
Santa Fe, New Mexico 87504-0968
(505) 827-2850

Commissioner
New York Department of Labor
One Main Street
Brooklyn, New York 11201
(578) 457-3518

Commissioner
North Carolina Department of Labor
4 West Edonton Street
Raleigh, North Carolina 27603
(919) 733-7166

Director
Accident Prevention Division
Oregon Department of Insurance and Finance
21 Labor and Industries Building
Salem, Oregon 73910
(503) 378-3304

Secretary
Puerto Rico Department of Labor and Human Resources
Prudencio Rivera Martinez Building
505 Munoz Rivera Avenue
Hato Rey, Puerto Rico 00918
(809) 754-2119-22

Commissioner
South Carolina Department Labor
3600 Forest Drive
P.O. Box 11329
Columbia, South Carolina
29211-1329
(803) 734-9594

Commissioner
Tennessee Department of Labor
Attention: Robert Taylor
501 Union Building
Suite "A" - 2nd Floor
Nashville, Tennessee 37219
(615) 741-2582

Administrator
Utah Occupational Safety and Health
160 East Third South
P.O. Box 5800
Salt Lake City, Utah 84110-5800
(801) 530-6900

Commissioner
Vermont Department of Labor and Industry
120 State Street
Montpelier, Vermont 05602
(802) 828-2765

Commissioner
Virgin Islands Department of Labor
Box 890
Christiansted
St. Croix, Virgin Islands 00820
(809) 773-1994

Commissioner
Virginia Department of Labor and Industry
P.O. Box 12064
Richmond, Virginia 23241-0064
(804) 786-2376

Director
Washington Department of Labor and Industries
General Administration Building
Room 334 - AX-31
Olympia, Washington 98504-0631
(206) 753-6307

Administrator
Wyoming Department of Occupational Health and Safety
604 East 25th Street
Cheyenne, Wyoming 82002
(307) 777-7786 or 777-7787

Related Publications

Single copies of the above booklets can be obtained from the nearest OSHA area or regional office or the U.S. Department of Labor, OSHA Publication Office, Room N-3101, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Please send a self-addressed mailing label with your request.

OSHA 2056 - All About OSHA

OSHA 3084 - Chemical Hazard Communication

OSHA 3075 - Controlling Electrical Hazards

OSHA 3080 - Hand and Power Tools

OSHA 3111 - Hazard Communication Guidelines for Compliance

OSHA 3074 - Hearing Conservation

OSHA 3077 - Personal Protective Equipment

OSHA 3079 - Respiratory Protection

OSHA 3104 - Hazard Communication - A Compliance Kit may be ordered from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 for $18.00 ($22.50 for foreign addresses). Specify GPO Order Number 929-02-00000-9. The kit can be ordered from GPO by phone using VISA or MasterCard; call (202) 783-3238.

U.S. Department of Labor
Occupational Safety and Health Administration
Regional Offices

Region I
(CT,* MA, ME, NH, RI, VT*)
133 Portland Street
1st Floor
Boston, MA 02114
Telephone:(617) 565-7164

Region II
(NJ, NY,* PR, VI*)
201 Varick Street
Room 670
New York, NY 10014
Telephone: (212) 337-2378

Region III
(DC, DE, MD,* PA, VA,* WV)
Gateway Building, Suite 2100
3535 Market Street
Philadelphia, PA 19104
Telephone: (215) 596-1201

Region IV
(AL, FL, GA, KY,* MS, NC,* SC,* TN*)
1375 Peachtree Street, N.E.
Suite 587
Atlanta, GA 30367
Telephone: (404) 347-3573

Region V
(IL, IN,* MI,* MN,* OH, WI)
230 South Dearborn Street
Room 3244
Chicago, IL 60604
Telephone: (312) 353-2220

Region VI
(AR, LA, NM,* OK, TX)
525 Griffin Street
Room 602
Dallas, TX 75202
Telephone: (214) 767-4731

Region VII
(IA,* KS, MO, NE)
911 Walnut Street
Room 406
Kansas City, MO 64106
Telephone: (816) 426-5861

Region VIII
(CO, MT, ND, SD, UT,* WY*)
Federal Building, Room 1576
1961 Stout Street
Denver, CO 80294
Telephone: (303) 844-3061

Region IX
(AZ,* CA,* HI,* NV*)
71 Stevenson Street
Room 415
San Francisco, CA 94105
Telephone: (415) 995-5672

Region X
(AK,* ID, OR,* WA*)
Federal Office Building
909 First Avenue
Room 6003
Seattle, WA 98174
Telephone: (206) 442-5930

*These states and territories operate their own OSHA-approved job safety and health programs (Connecticut and New York plans cover public employees only). States with approved programs must have a standard that is identical to, or at least as effective, as the Federal standard.